## UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NORTH CAROLINA WESTERN DIVISION

| VARIETY STORES, INC.,  | ) |                |
|------------------------|---|----------------|
| Plaintiff,             | ) |                |
| v.                     | ) | JUDGMENT       |
| WAL-MART STORES, INC., | ) | 5:14-CV-217-BO |
| Defendants.            | ) |                |

## **Decision by Court.**

This action came before the Court on remand from the Fourth Circuit Court of Appeals, for a trial by jury on the issue of liability, and for a trial by jury on the issue of damages owed by defendant to plaintiff.

**IT IS ORDERED, ADJUDGED AND DECREED** pursuant to the jury verdict and judgment entered October 24, 2018, plaintiff Variety proved by a preponderance of the evidence that defendant Walmart's use of the BACKYARD GRILL + design mark was likely to cause confusion in connection with plaintiff Variety's THE BACKYARD, BACKYARD, and BACKYARD BBQ marks and was therefore infringing.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** pursuant to the jury verdict and judgment entered October 24, 2018, defendant Walmart's infringement was willful.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that, pursuant to jury verdict entered February 12, 2019, plaintiff Variety is awarded a reasonable royalty in the amount of \$45,536,846.71 as a result of defendant Walmart's trademark infringement, with post-judgment interest at the rate of 2.56% per annum.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that, pursuant to jury verdict entered February 12, 2019, plaintiff Variety is awarded profits earned by defendant Walmart from the infringing sales in the amount of \$50,000,000.00, with post-judgment interest at the rate of 2.56% per annum.

## This judgment filed and entered on February 12, 2019, and served on:

Christina Davidson Trimmer (via CM/ECF Notice of Electronic Filing)

Jamin S. Soderstrom (via CM/ECF Notice of Electronic Filing)

Samuel G. Brooks (via CM/ECF Notice of Electronic Filing)

Samuel A. Long, Jr. (via CM/ECF Notice of Electronic Filing)

Scott P. Shaw (via CM/ECF Notice of Electronic Filing)

W. Thad Adams, III (via CM/ECF Notice of Electronic Filing)
Elizabeth E. Brenckman (via CM/ECF Notice of Electronic Filing)
Mark S. Puzella (via CM/ECF Notice of Electronic Filing)
Matthew S. DeAntonio (via CM/ECF Notice of Electronic Filing)
Richard David Hosp (via CM/ECF Notice of Electronic Filing)
William W. Wilkins (via CM/ECF Notice of Electronic Filing)
Jeffery C. Mok (via CM/ECF Notice of Electronic Filing)
Kristen Elena Small (via CM/ECF Notice of Electronic Filing)

PETER A. MOORE, JR., CLERK

February 12, 2019

/s/ Lindsay Stouch
By: Deputy Clerk